

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

PAUL D. ASWEGAN,  
Plaintiffs,

vs.

TED D'AMICO, M.D., WARDEN BRIAN  
WILLIAMS, WARDEN NEVINS,  
DR. PETERSON, DR. SANCHEZ,  
CATHY LNU, BRUCE BANNISTER,  
GLEN WARTON,  
Defendant,

2:06-cv-1559-JCM-RJJ

REPORT & RECOMMENDATION  
OF UNITED STATES  
MAGISTRATE JUDGE

This matter is before the Court on Defendants' Motion to Dismiss (#23).

The Court having reviewed the Motion (#23) and the file herein makes the following findings:

1. On July 6, 2007, Defendants filed a Motion to Dismiss (#23).
2. On July 6, 2007, Plaintiff was advised to file an opposition to the Motion (#23) on or before July 23, 2007. (*See*, Minute Order (#24)).
3. Plaintiff failed to file a response pursuant to Local Rule 7-2(d) therefore, Plaintiff consents to the granting of said motion.
4. Plaintiff has failed to prosecute this case pursuant to Local Rule 41-1.
5. Plaintiff has failed to advise the court of his current address. (*See*, Returned Mail Receipt (#25)).

**RECOMMENDATION**

Based on the foregoing and good cause appearing therefore,

IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that Defendants' Motion to Dismiss (#23) be **GRANTED** and that this case be **DISMISSED WITH PREJUDICE**.

**NOTICE**

Pursuant to Local Rule IB 3-2 [former LR 510-2] any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within ten (10) days after service of this Notice. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986). This Circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991); Britt v. Simi Valley United Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 26<sup>TH</sup> day of November, 2007.

  
ROBERT J. JOHNSTON  
United States Magistrate Judge